

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHARLES E ALLEN,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE,

Defendant.

CASE NO. C10-5721 RBL

ORDER DENYING PLAINTIFF'S
MOTION TO MODIFY
SCHEDULING ORDER

[Dkt. #36]

THIS MATTER is before the Court on Plaintiff's Motion to Amend the Scheduling Order [Dkt. #36]. Plaintiff actually seeks a jury trial instead of the currently scheduled bench trial. [See Dkt. #27].

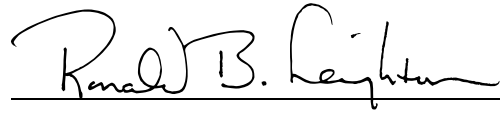
Plaintiff initially sought a jury trial and Defendant objected. Plaintiff argues that the Court should exercise discretion to modify the scheduling order reflecting a trial to the court. Defendant argues that Plaintiff does not have the right to a jury trial on his FMLA claim against the United States.

The right to a jury trial against the federal government exists only with an "affirmative and unambiguous" statement from Congress. *Steinhardt v. Potter*, 326 F. Supp. 2d 449, 451 (S.D.N.Y. 2004); see *Lehman v. Nakshian*, 453 U.S. 156, 160–61 (1981). FMLA does not provide a

1 right to a jury trial in actions against the United States. *Steinhardt*, 326 F. Supp. 2d at 451 (quoting
2 *Davis v. Henderson*, 2000 WL 1828476, 238 F.3d 420 (6th Cir. Dec.4, 2000)).

3 Plaintiff brought his claim against the United States under FMLA. Therefore, Plaintiff is
4 not entitled to a jury trial. Plaintiff's Motion to Modify Scheduling Order with a jury trial is
5 DENIED.

6 Dated this 17th day of July, 2012.

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9 Ronald B. Leighton
United States District Judge
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